

BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE  
OF THE STATE OF TENNESSEE AT NASHVILLE

TENNESSEE SECURITIES DIVISION,	)	
Petitioner	)	
	)	Order No. 03-030
vs.	)	
	)	
FERGUSON FINANCIAL SERVICES	)	
AND WILLIAM R. FERGUSON	)	
Respondents	)	

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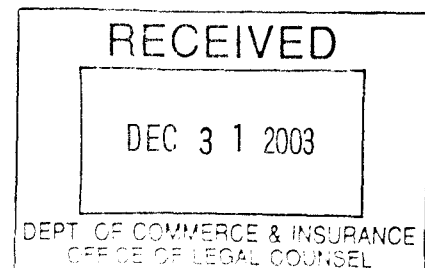
CONSENT ORDER

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The Tennessee Securities Division ("Division"), and Ferguson Financial Services and William R. Ferguson, Respondents herein, agree to the entry of this Agreed Order in accordance with Tenn. Code Ann. § 48-2-116 of the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. ("Act"), which states that the Commissioner of Commerce and Insurance ("Commissioner") from time to time may make such orders as are necessary to carry out the provisions of the Act.

**GENERAL STIPULATIONS**

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.
2. This Consent Order is executed by the Respondents for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and



consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondents fully understand that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Consent Order for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondents expressly waive all further procedural steps, and expressly waive all rights to seek judicial review of or to otherwise challenge or contest the validity of the Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

#### **FINDINGS OF FACT**

1. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. (the "Act"), places the responsibility for the administration of the Act on the Commissioner of Commerce and Insurance ("Commissioner"). The Division is the lawful agent through which the Commissioner discharges this responsibility. Tenn. Code Ann. § 48-2-115.

2. Respondent, Ferguson Financial Services is a Florida business entity located in Lake Worth, Florida. Ferguson Financial Services has never been registered as a broker-dealer, agent of a broker-dealer, or investment adviser with the Division.

3. Respondent, William R. Ferguson (hereinafter referred to as "Ferguson"), is a citizen and resident of Florida, whose address is 1601 North K. Street, Lake Worth, FL 33460. Ferguson is the president of Ferguson Financial Services. Ferguson, although

registered as an agent in other states, was not and is not currently registered in Tennessee with the Division. Ferguson's CRD number is 2327992.

4. On or about October 11, 2001, Ms. Barbara Bowling (hereinafter referred to as "Bowling") received an unsolicited electronic mail regarding a Real Estate Investment Trust ("REIT") opportunity from Ferguson. Bowling is a citizen and resident of the state of Tennessee. At the time of the solicitation, neither Ferguson nor Ferguson Financial Services was registered with the Division. The e-mail was authored by Ferguson and sent in the name of Ferguson Financial Services. Bowling referred the electronic mail to the Division.

5. The electronic mail received by Bowling stated that the REIT was registered with the SEC and privately traded. The mail goes on to describe the background of the REIT and most recent annual yield.

6. Bowling did not invest in the advertised REIT through Ferguson or Ferguson Financial Services.

### **CONCLUSIONS OF LAW**

7. Pursuant to Tenn. Code Ann. §48-2-115(a), the responsibility for administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

8. Tennessee Code Annotated §48-2-109(a) provides that it is unlawful for any person to transact business from or in this state as a broker-dealer, agent of a broker-dealer, or investment adviser unless such person is registered as a broker-dealer, agent of a broker-dealer, or investment adviser under this part.

9. Tennessee Code Annotated §48-2-109(b) provides that it is unlawful for any broker-dealer to employ an agent to transact business as an agent unless the agent is registered under this part.

10. The averments in paragraph four of this Consent Order, constitute practices by Ferguson Financial Services which would provide grounds under Tenn. Code Ann. §48-2-109 for the entry of an order of sanctions against Ferguson Financial Services.

11. The averments in paragraph four of this Consent Order, constitute practices by Ferguson which would provide grounds under Tenn. Code Ann. § 48-2-109 for the entry of an order of sanctions against Ferguson.

#### **ORDER**

**NOW, THEREFORE**, on the basis of the foregoing, and William R. Ferguson's, both individually and in his capacity as the representative of Ferguson Financial Services, waiver of his right to a hearing and appeal under the Tennessee Securities Act and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 et seq., and William R. Ferguson's, both individually and in his capacity as the representative of Ferguson Financial Services, admission of jurisdiction of the Commissioner, the Commissioner finds that William R. Ferguson, individually and in his capacity as the representative of Ferguson Financial Services, for the purpose of settling this matter, admits the matters herein, has agreed to the entry of this Order and that the following Order is appropriate, in the public interest and necessary for the protection of investors.

**IT IS ORDERED**, pursuant to Tennessee Code Annotated § 48-2-116(a) of the Tennessee Securities Act that:

1. Respondents shall fully comply with the Tennessee Securities Act, as amended, and all rules promulgated thereunder;

2. Respondents, William R. Ferguson and Ferguson Financial Services, shall refrain from participating in any manner as a broker-dealer, an agent of a broker-dealer, and/or investment adviser in the state of Tennessee for a period of two (2) years.

3. The Respondent, William R. Ferguson, agrees that should he seek registration with the Division as a broker-dealer, agent of a broker-dealer, investment adviser, or agent of an investment adviser after the period of refrain, he shall, no longer than six (6) months prior to the date he seeks registration with the Division, have retaken and passed the Series 63 Uniform Securities Agent State Law Examination given by the North American Securities Administration Association.

4. Respondent shall amend form U-4, pursuant to the instructions of said form and as required by the NASD, and file the appropriate Disclosure Reporting Page to disclose the details of this filed administrative action.

5. Respondent, William R. Ferguson, individually, is hereby **ASSESSED** a civil penalty in the amount of five thousand dollars (\$5,000.00). \$2,500.00 of said sum shall be due and paid in full upon execution of this document, but in no event later than December 24, 2003. Payment, in the form of a cashier's check, shall be mailed to:

State of Tennessee  
Department of Commerce and Insurance  
Securities Division  
Attention: Michele K. Elliott, Staff Attorney  
500 James Robertson Parkway, 5<sup>th</sup> Floor  
Nashville, Tennessee 37243.

The balance of said penalty, being \$2,500.00, shall be due and paid in full on or before March 1, 2004. Payment, in the form of a cashier's check, shall be mailed to:

State of Tennessee  
Department of Commerce and Insurance  
Securities Division  
Attention: Michele K. Elliott, Staff Attorney  
500 James Robertson Parkway, 5<sup>th</sup> Floor  
Nashville, Tennessee 37243.

8. Respondent, William R. Ferguson, in his capacity as president of Ferguson Financial Services, is hereby **ASSESSED** a civil penalty in the amount of one thousand dollars (\$1,000.00). \$500.00 of said sum shall be due and paid in full upon execution of this document, but in no event later than December 24, 2003. Payment, in the form of a cashier's check, shall be mailed to:

State of Tennessee  
Department of Commerce and Insurance  
Securities Division  
Attention: Michele K. Elliott, Staff Attorney  
500 James Robertson Parkway, 5<sup>th</sup> Floor  
Nashville, Tennessee 37243.

The balance of said penalty, being \$500.00, shall be due and paid in full on or before March 1, 2004. Payment, in the form of a cashier's check, shall be mailed to:

State of Tennessee  
Department of Commerce and Insurance  
Securities Division  
Attention: Michele K. Elliott, Staff Attorney  
500 James Robertson Parkway, 5<sup>th</sup> Floor  
Nashville, Tennessee 37243.

9. Respondents hereby agree that failure to comply with all the requirements and prohibitions contained in this Order shall result in the denial of any application by Respondents for registration with the Division.

**IT IS ORDERED** that this Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner against Ferguson Financial Services, William R. Ferguson, and Commonwealth Financial Network for violations of the Act alleged by the Tennessee Securities Division to have occurred with respect to transaction involving Barbara Bowling and the facts contained herein.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, William R. Ferguson, individually and as representative of Ferguson Financial Services, affirmatively states that he has freely agreed to the entry of this Consent Order, that he waives his right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

**ENTERED** this 29<sup>TH</sup> day of DECEMBER, 2003.

Paula A. Flowers

Paula A. Flowers, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

William R. Ferguson  
William R. Ferguson, Individually

Daphne D. Smith  
Daphne D. Smith,  
Assistant Commissioner for Securities  
Department of Commerce and Insurance

William R. Ferguson  
William R. Ferguson, as President and  
Representative of  
Ferguson Financial Services

Michele K. Elliott  
Michele K. Elliott (#022618)  
Staff Attorney  
Department of Commerce and Insurance  
500 James Robertson Parkway, Fifth Floor  
Nashville, Tennessee 37243  
(615) 741-2199